

Stephen M. Feldman, OSB No. 932674
SFeldman@perkinscoie.com
PERKINS COIE LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

William Cronin; wcronin@correronin.com
Paul R. Raskin, OSB No. 070131; praskin@correronin.com
Seann C. Colgan, OSB No. 052211; scolgan@correronin.com
CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Telephone: 206.625.8600
Facsimile: 206.625.0900

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

VESTAS-AMERICAN WIND
TECHNOLOGY, INC., a California
corporation,

Plaintiff,

v.

SWISS RE SPECIALTY INSURANCE
(UK) LIMITED; and CERTAIN
UNDERWRITERS AT LLOYD'S,

Defendants.

CERTAIN UNDERWRITERS
SUBSCRIBING TO STOCK
THROUGHPUT POLICY NO.
B0753QPC000881000000,

Third-Party Plaintiffs,

v.

IF SKADEFORSIKRING, a foreign
corporation,

Third-Party Defendant.

No. CV08-1121 BR

FIRST AMENDED COMPLAINT
(Breach of Contract)

DEMAND FOR JURY TRIAL

1- FIRST AMENDED COMPLAINT

Plaintiff Vestas-American Wind Technology, Inc. (“Vestas”) alleges as follows:

THE PARTIES

1. Vestas is and at all material times was a corporation, incorporated under the laws of the State of California, with its principal place of business in Portland, Oregon. Vestas sells and installs wind turbines for the generation of electricity through wind power.

2. Defendant Swiss Re Specialty Insurance (UK) Limited (“Swiss Re”) is and at all material times was a United Kingdom entity. Defendants Certain Underwriters at Lloyd’s are those additional underwriters obligated under the Stock Throughput Policy that is the subject of this First Amended Complaint, including individual members of the following Lloyd’s syndicates: Lloyd’s Syndicate 1225, Lloyd’s Syndicate 3210, and Lloyd’s Syndicate 4444. Swiss Re and Certain Underwriters at Lloyd’s (hereafter referred to collectively as “Defendants”) are surplus lines insurers licensed in Oregon.

JURISDICTION

3. The Circuit Court for the State of Oregon in which this action was original filed has jurisdiction and venue is proper in that Court because Vestas’ principal place of business is in Portland, Oregon, and because Defendants: (a) are licensed or authorized to do business in the State of Oregon; (b) have contracted to insure risks located in the State of Oregon; (c) have, within relevant time periods, transacted business within the State of Oregon; and/or (d) are contractually obligated by virtue of the insurance policy they issued to Vestas to submit to the jurisdiction of any court of competent jurisdiction within the United States.

GENERAL ALLEGATIONS

4. Vestas purchased from Defendants a Stockthroughput Insurance policy (bearing the unique marker reference number B0753PC0701145), which provided insurance coverage to Vestas during the period from January 30, 2007 to January 30, 2008 (the “Policy”).

2- FIRST AMENDED COMPLAINT

5. The Policy provides coverage for losses to, among other things, goods and/or merchandise of every description and all stock in trade of Vestas, including “blades” and the various other components that comprise the wind turbines sold by Vestas. The Policy covers, among other things, all such goods, merchandise, and stock while in storage or inland transit in North America.

6. On or around September 17, 2007, Vestas’ equipment, including wind turbine blades and other wind turbine equipment, was damaged while being stored on land at the Port of Beaumont in Beaumont, Texas as a result of Hurricane Humberto (the “Loss”).

7. The Policy provides coverage for the Loss suffered by Vestas, which loss is in excess of Fifteen Million Dollars (\$15,000,000.00).

8. Following Hurricane Humberto, in or around September 2007, Vestas provided notice to Defendants of the Loss and made demand upon Defendants for payment. Representatives for Defendants went to the Port of Beaumont and inspected the damage sustained to Vestas’ wind turbine equipment. In or around November 2008, Vestas provided further notice of additional Loss incurred to Vestas’ equipment that was being stored on land at the Port of Beaumont as a result of Hurricane Humberto.

9. Despite acknowledging that Vestas incurred damage to its wind turbine equipment during Hurricane Humberto, Defendants have failed and refused to make payment for the Loss which is covered by the Policy.

10. Vestas has paid all premiums and fully performed all other obligations under the Policy such that all conditions precedent to Defendants’ obligation to reimburse Vestas for the Loss have been satisfied. To the extent that any conditions precedent required under the Policy have not been fully performed by Vestas, such conditions have been waived, excused, are subject to estoppel and/or have been otherwise discharged. To the extent that any additional premiums are due and owing, such premiums are calculable pursuant to the Policy, but the amounts due, if

3- FIRST AMENDED COMPLAINT

any, have not been identified by Defendants and Vestas remains ready and willing to pay any such additional premiums to the extent obligated by the Policy.

**CLAIM FOR RELIEF
(Breach of Contract)**

11. Vestas incorporates by this reference each of its allegations in paragraphs 1 through 10 above.

12. Defendants' refusal to pay the amounts owing for the Loss is a breach of the insurance contract (i.e., the Policy) between the parties.

13. As a result of Defendants' breach of contract, Vestas has been damaged in an amount to be proven at trial, which is in excess of Fifteen Million Dollars (\$15,000,000.00). Under the Policy, Defendants are liable for such damages up to the applicable policy limits.

14. As another direct and proximate result of Defendants' breach of the Policy, Vestas has been forced to incur attorneys' fees and other expenses in order to prosecute this action. Under ORS 742.061, Vestas is entitled to recover its attorneys' fees and costs in prosecuting this action, as well as those attorneys' fees and costs incurred in otherwise attempting to enforce Defendants' coverage obligations under the Policy.

15. As an additional direct and proximate result of Defendants' breach of the Policy and consistent with the terms of the Policy, Vestas also has incurred attorneys' fees and other expenses to pursue and preserve claims related to the Loss. These include, but are not necessarily limited to, attorneys' fees and costs incurred pursuing claims against IF Skadeforsikring and expenses storing the damaged wind turbine equipment. These fees, costs and other expenses have exceeded \$100,000.00 and continue to accrue. Vestas is entitled to recover such fees, costs and expenses under the terms of the Policy.

16. In addition to its actual damages, Vestas is entitled, pursuant to ORS 82.010(1)(a), to recover prejudgment interest at the Oregon statutory rate of 9% per annum on all amounts that Defendants have failed to pay Vestas from the date that such amounts were due.

4- FIRST AMENDED COMPLAINT

PRAYER FOR RELIEF

WHEREFORE, plaintiff Vestas-American Wind Technology, Inc. prays for judgment and relief as follows:

1. For an award of damages in an amount to be determined, but in no event less than Fifteen Million Dollars (\$15,000,000.00), plus prejudgment interest thereon at the statutory rate of 9% per annum from the date(s) due until paid;
2. For an award of attorneys' fees and costs and other expenses incurred pursuing claims against IF Skadeforsikring and expenses related to storing Vestas' damaged wind turbine equipment pursuant to the Policy, plus prejudgment interest;
3. For an award of the attorneys' fees and costs incurred in enforcing Defendants' coverage obligations under the Policy, including those fees and costs incurred in this action;
4. For an award of post-judgment interest; and
5. For such further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), plaintiff Vestas-American Wind Technology, Inc. respectfully demands a trial by jury on all issues and claims for which it has a right to a trial by jury.

DATED: February 18, 2009

PERKINS COIE LLP

By: /s/ Stephen M. Feldman

Stephen M. Feldman, OSB No. 932674
SFeldman@perkinscoie.com
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

Attorneys for Plaintiff

5- FIRST AMENDED COMPLAINT

William Cronin (admitted *pro hac vice*)
Paul R. Raskin, OSB No. 070131
Seann C. Colgan, OSB No. 052211
CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Telephone: 206.625.8600
Facsimile: 206.625.0900

Attorneys for Plaintiff

6- FIRST AMENDED COMPLAINT